



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Woobentrof Dieudonne
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FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-116, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: October 30, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts: You are employed as a Network Manager 2 for the Information Technology Department (ITD) for the Port of Miami. You would like to engage in outside employment as a consultant for Automated Port Services, Inc.

As an ITD Network Manager 2, you act as a project manager responsible for the planning, design, configuration, and implementation of Seaport Real-Time System projects. Your duties include defining/enforcing IT network requirements for construction of new sites, which consists of installations/configurations of new network equipment and cabling to include network protocols to provide the ability to connect to all required services, and ensuring that all required project tasks are completed. You are also responsible for troubleshooting, repair, maintenance and support of

current network components and cables which support all computing products that pertain to Seaport Real Time Systems, and other Real Time Systems such as Network Video Recorders, Ground Transportation, Parking Revenue System, Access Control and Mass Notification System, Data, Audio/Visual and Voice Communication System.

Automated Port Services, Inc. (APS) is design and consulting company that organizes implementation of integrated critical infrastructure systems including security and operational systems. APS also provides risk assessment services, training, security engineering, and design to procurement assistance. APS President and principal is Louis Noriega. Mr. Noriega is the former Miami-Dade County ITD Chief Information Officer for the Port of Miami. APS is not a County vendor.

Your duties as a consultant for APS would include providing technical expertise in technology designs. Specifically, you will determine requirements and review technological designs to ensure compliance. Your position does not include project management services, nor will your services go beyond the initial design phase of a project. You advise that you will not be providing design/consulting services that compete or use the Seaport system, information, and/or projects in any way nor will you assist the same clients.

You further advise that your consultant services for APS will not be provided in the Tri-County area including Monroe, Miami-Dade, and Broward Counties. This work would occur outside of your County hours and would not require the use of any equipment or resources which you use in your County employment.

Issue: Whether any prohibited conflicts of interest may exist between your employment as a Network Manager 2 for ITD and your prospective outside employment as a consultant for APS.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds that it is contrary, detrimental or adverse

to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In consideration of your inquiry we must look to several factors, the first of which is whether there is similarity in your duties as a Network Manager 2 for ITD and your prospective position as a consultant for APS. While it does appear that your County duties and your duties for your prospective employer may have some overlap, in that you would be reviewing technological designs and ensuring compliance of specification requirements, your duties with APS would be more limited to the design phase of the project. Additionally, any potential project with APS would be outside the area of the Port of Miami and would not require the use or competition with the Seaport systems in any way.

The Ethics Commission has previously opined that a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment provided any necessary limitations are imposed.

Provided your aforementioned assurances, the following additional limitations may also serve to avoid a conflict:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of APS, or for the benefit of APS clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself, APS, or APS clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent APS or APS clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for APS, it is important to note that you would be prohibited from doing any such activities on behalf of APS or its clients.

- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.